Meeting of the

Skilled Nursing Facility Financial Solvency Advisory Board

1031 18th Street
Sacramento, California

Minutes of the Meeting – August 8, 2003

MEMBERS PRESENT:

Eric Carlson, Chair
Blaine Hendrickson, Vice Chair
Brenda Klutz (Director's Designee)
Jeanine Rodriguez
Eddie Rowles
Joan Spicer
Ted White

STAFF PRESENT:

Lisa Ellis, Management Services Technician
Marlys Huez, Senior Counsel
Barbara Jones, Special Consultant
Suzanne Kwong, Research Analyst
Peter Mackler, Southern California Policy Liaison
MaryRose Repine, Health Program Specialist
Michael Sugar, Student Intern

CALL TO ORDER, ROLL CALL, WELCOME, INTRODUCTIONS AND ADMINISTRATIVE MATTERS:

Ted White was administered the Oath of Office prior to the call to order.

Appropriate notice having been given, the Department of Health Services Skilled Nursing Facility Financial Solvency Advisory Board was called to order at 9:40 a.m. by Eric Carlson, Chair. Minutes of the June 4, 2003 meeting were reviewed and approved with the following amendment: Page 3 section heading "POTENTIAL NEXT STEPS," next to last line, substitute: "determined that" for "the opinion of counsel." The adoption of the Procedure Manual was moved, seconded and approved.

Mr. Eric Carlson commented that the efforts of the Board are limited by a short time period and constrained resources. He hopes by the conclusion of the year there is a recommendation from the Board that is beneficial to the state. The context of the materials can take the Board in a variety of directions and the Board will determine that direction.

PANEL PRESENTATIONS:

(The order of the presentations was changed in order to telephonically connect with Mr. Herb Horowitz, Shattuck Hammond Partners LLC. Dr. Martin Kitchener, University of California San Francisco, presented first, the following is a summary of the presentations in order of the agenda items.)

"The Financial Health of the California Skilled Nursing Industry,"- Mr. Herb Horowitz, Shattuck Hammond Partners, presented the findings of a recent research effort. Mr. Horowitz highlighted the nursing home industry's heavy reliance on government spending. He discussed the administrative cost increases related to workers compensation and liability insurance. He further outlined the impacts caused by the following factors: greater transference of assets by estate planning, the growth in the 85+ age group, and increasing acuity in nursing homes as other care options become available. He explained that while the total number of nursing homes and patients have remained constant, ownership has shifted. Not-for-profits have declined, large for-profits are considering leaving the market, and there is an increasing number of small operators. Concern was expressed regarding the viability of small operations and their access to capital. Mr. Horowitz noted that while bankruptcy does not equal closure, an independent operator, may have less possibility for restructuring. He responded to clarifying questions from the Board.

"Nursing Homes in Jeopardy: The Impact of a 15% Cut in Medi-Cal Reimbursement" - Dr. Martin Kitchener, University of California San Francisco presented research results from a series of research efforts. The presentation highlighted indicators of instability including: low staffing; low wages; high staff turnover; falling occupancy; facility net income margin; bankruptcy; closure; and, low Medi-Cal rates. These results are posted at www.calnhs.org. Responses from industry to rate cuts are predicted to be: reduced costs; alternative revenues; stop taking Medi-Cal residents; and, increased threat of bankruptcy and closure. Dr. Kitchener included a discussion of the following "triggers" for instability: net income margin >5 percent; 59 or few beds; and counties with high spare bed capacity. Dr. Kitchener recommended that facilities that are considered vulnerable should post a bond. He responded to clarifying questions from the Board.

"Wall Street's View of Nursing Facilities," - Mr. Michael Sugar, Student Intern, Department of Health Services presented on the CMS Report. Mr. Sugar indicated that CMS found the following: Profits have declined since the mid-1990s, from 5% to 7%, to the current 1% to 2%. Declining payments from the BBA and the sunset of add-on provisions are contributory factors. Small facilities are the most impacted. Wall Street has a negative outlook on nursing homes. Facilities are highly leveraged and cannot assume additional debt. With the 2002 sunset of add-on payment, three for-profit chains have declared bankruptcy. Resident acuity levels are increasing and Federal and state government payments are not increasing to meet the change. The report documented a 24% increase in liability insurance. States are trying to promote long-term care insurance. Mr. Sugar responded to clarifying questions from the Board.

Standards and Financial Solvency Experience in Other States – Ms. MaryRose Repine, DHS Licensing and Certification Program, presented a report of findings relative to other States' experiences regarding solvency. This report was as directed by the Board at the June 4, 2003 meeting. Ms. Repine highlighted six principal areas. These included: statutory or regulatory financial standards; reporting triggers; boards for oversight, monitoring and policy formulation; models for early warning systems; incentives/disincentives, and liability insurance assistance. Ms. Repine presented information on several focus States, the strategies used and the efficacy of those strategies. Information for this report was derived through a review of existing statutory/regulatory material, interviews with select States, a "call" to other states via an email list serve, and other documentary material.

Ratios used by Audits and Investigations — Mr. Mike Harrold, DHS Audits and Investigations, presented information regarding the ratios used relative to skilled nursing facilities. Mr. Harrold also explained that the DHS auditors will validate balance sheet ratios on-site, as well as reviewing outliers in legal fees, which could indicate planning for bankruptcy filing, late payments in employment taxes, or any other late payments. If on-site analysis indicate financial concerns, the district managers are notified of the potential financial instability issues. He discussed additional information that would be helpful and noted that chain organizations are more challenging to determine viability. He discussed the limitation of home office audits as they relate to individual facilities.

California Department of Managed Health Care (DMHC) – Mr. Kevin Donohue, Counsel, DMHC reported on the Financial Solvency Board Efforts at DMHC. He explained that SB 260 (1999) required oversight by the agency of financial solvency of risk bearing organizations. DMHC set a minimum standard of 50 percent of the risk taken on must be carried with cash assets; they would not permit the physical plant to be considered an asset for the purposes of taking on financial risk. Collection and confidentiality of data were the largest issues for DMHC. There was not an existing data collection entity and one could not be found to assume the data collection and validation workload. Consequently, DMHC began collecting quarterly and annual data. A lawsuit barred both the collecting and publicizing of data. Revised regulations allow for confidentiality of information if harm to the business can be demonstrated by disclosure. An additional regulatory package on AB 1455 will include regulations for health plans to report on risk bearing organizations. There are current legislative efforts to address confidentiality concerns. Mr. Donahue responded to questions.

County Organized Health Systems (COHS) – Ms. Khahn Vu, Cal Optima presented on behalf of Cal-Optima and the other COHSs. She explained that the five COHSs are health insuring organizations created by federal, state and county law to administer the Medi-Cal program. They operate under a waiver from the federal program with oversight by DHS. They are not subject to the Knox-Keene regulations. This community based model was created to address needs that were perceived as unmet under the fee-for-service model. Long term care providers within the Cal-Optima model are not sub-capitated. All rates and rate increases or decreases are paid in accordance with the State set Medi-Cal fee for service rates. COHSs are not regulators; they work with the regulators for oversight of financial solvency, consolidations or mergers. Cal Optima focuses on access for members and care management. In response to questions by the Board, Ms Vu explained that Cal Optima maintains an open network for long term care providers; they require maintenance of liability insurance and compliance with Department of Health Services standards for licensing and certification. They do not set solvency requirements separate from the State's.

Insurance Company Solvency – Mr. Woody Girion, California Department of Insurance, presented on solvency matters relating to the insurance industry. He explained various warning signs for solvency including the following: A company that changes officers or directors frequently is an indication of instability; the review of alignment in assets and the liabilities can show changes in interest; credit ratings and Security and Exchange Commission filings can provide key insight. He advised using actuarial projections for guidance and described the value of the Income Statement review for operating performance. Additionally, Mr. Girion discussed the value of trend analysis reviews of past performance for future projections and the role of holding companies and affiliate transactions as it relates to oversight. Mr. Girion responded to questions. The Board requested copy of the ratios, mentioned by Mr. Girion that are used by the Department of Insurance in their oversight of insurance companies. Mr. Girion will provide these to Ms. Repine for the Board.

DHS Legislative Report, "Liability Insurance for California Long-Term Care Providers, A Report to the California Legislature"— Ms. Barbara Jones, Special Consultant, DHS, presented information relative to the legislative report. Ms. Jones explained that there are no requirements for skilled nursing facilities to carry liability insurance or to report details on liability insurance to the regulatory agency. As of the date of the report, only 13 percent of the skilled nursing facilities were insured by California regulated insurance companies. Other coverage may come from selfinsurance, risk pools, non-California licensed insurers, or facilities may go without insurance coverage. Evidence shows there is an increase in the number and severity of claims. There has been a compounding trend of rate increases of approximately 40 percent. Information from the year 1999-2000, listed 8 insurance groups writing liability insurance for skilled nursing facilities. Insurance companies cite quality concerns and litigation as reasons for withdrawing from the market. The DHS report recommends several activities including: improving the amount of information collected on litigation, claims and judgments; implementing risk management plans; and working with the Attorney General's office to review litigation and its impact on facilities and quality of care. The report has been shared with the State Long-term Care Council. The Board requested a current list of liability insurance providers.

Workers' Compensation Insurance Issues – Mr. Christopher Citko, Counsel, California Department of Insurance presented information on worker's compensation. He explained that Workers' Compensation started in 1913 as a no fault system. Medical costs have increased more than inflation. The State Compensation Insurance Fund has become the largest property and casualty company in the country. There is a significant rate increase proposed. The Insurance Commissioner only has limited ability to deny rate changes, this would be in the situation of troubled companies, and there is not the ability to deny rate increases that are considered to be excessive increases. Two approaches that are being proposed are medical fee schedules and utilization management through evidence based medical treatment guidelines to address some of the issues regarding the increasing costs. Mr. Citko responded to questions regarding managed care carve outs and alternative models.

Rate Setting Experience in Other States - Ms. Lupe Martinez, Medi-Cal Program, DHS, presented information on rate setting. Ms. Martinez outlined the current DHS process and the progress of the contractor. She discussed the status of the reports to the Legislature. She outlined the process and explained that the implementation for California would be delayed. She provided information on the methodologies and processes of other States. Ms. Martinez responded to questions of the Board.

Formulation of a Workplan and Timeline:

The Board discussed the approach for the workplan. Discussion included: The public information required to be reported by law to OSHPD was discussed. Timeliness is needed to enhance oversight. "Triggers" currently require self-reporting. Stakeholder recommendations have been solicited. Staff should be requested to summarize the stakeholder responses as well as key findings from other states and presenters today. Requirements currently on the books can be reviewed for enhancement. Conduct a review of available data that can be developed into an early warning system.

Ms. Repine was asked to present options for proposed work projects. The Board highlighted the need to focus on the monitoring of existing regulations, existing data, and potentially improving current self-reporting. Key variables should be highlighted in a literature review. Discussion was held on building a model for indicators and testing the model on past failures. The Chair directed staff to break the discussed ideas into sub group elements. These elements would be emailed to members so that they may give consideration to areas that interest them for volunteering for participation.

Public Comment on the Workplan:

Mr. Daryl Nixon, a member of the public, provided an opinion to the Board on the matter of increasing timeliness of information through quarterly requirements. He outlined, that without timely information, an early warning system would be without value.

Next Meeting – The next meeting has been scheduled for October 8 in a Southern California location. The members discussed the locations for the meeting. Ms. Repine will work with Mr. Peter Mackler and finalize the meeting location with the Chair within a week. Ms. Repine will inform the members.

PUBLIC COMMENT:

Ms. Judy Citko, a member of the public, representing the California Healthcare Association expressed concern about any implications on the Distinct Part Nursing Facilities. She noted the need to review any recommendations in light of the unique qualities of the Distinct Part Nursing Facilities to determine whether the same standards should apply.

ADJOURNMENT

The meeting was adjourned at 4:15 p.m.